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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

FILE: [REDACTED] Office: LIMA, PERU

Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

JUL 17 2003 - 02H2212

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru who procured admission into the United States in 1991, by presenting a passport and nonimmigrant visa belonging to another person. The record indicates that the applicant was ordered removed from the United States (U.S.) in 1997. The applicant is the beneficiary of a petition for alien relative through his naturalized U.S. citizen father. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(i) and 1182(h), in order to reside in the United States near his father.

The OIC concluded that the applicant was inadmissible to the United States pursuant to sections 212(a)(6)(C) and 212(a)(2)(A) of the Act, 8 U.S.C. §§ 1182(a)(6)(C) and 1182(a)(2)(A), and that he had failed to establish extreme hardship to his U.S. citizen father. The application was denied accordingly.

On appeal, counsel asserts that the applicant's U.S. citizen father (Mr. [REDACTED]) suffers health problems that make it difficult for him to travel to, or visit Peru. Counsel asserts further that the separation from his son causes Mr. [REDACTED] extreme emotional hardship. In addition, counsel asserts that Mr. [REDACTED] will suffer financial hardship if the applicant's waiver is not granted because Mr. [REDACTED] must spend money to visit his son.

It is noted that the OIC decision found the applicant to be inadmissible pursuant to section 212(a)(2)(a)(I) of the Act based on the fact that the applicant was convicted of three Driving While Under the Influence of Alcohol (DWI) offences between 1992 and 1993.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

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(1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien
.....

In *Matter of Torres-Varella*, 23 I&N Dec. 78 (BIA 2001), the Board of Immigration Appeals (BIA) held that a simple driving under the influence conviction is not a crime involving moral turpitude unless the alien is convicted under a state statute that requires a culpable mental state. In the present case, the OIC decision contains no analysis regarding the language of the DWI statutes, or regarding whether a culpable mental state element was contained in any of the state statutes.

Because the record lacks evidence establishing that the applicant was convicted under a DWI containing a culpable mental state provision, this office finds that the OIC erred in finding the applicant inadmissible pursuant to section 212(a)(2)(A)(I) of the Act. Nevertheless, this office also finds the OIC error to be harmless. The applicant is clearly inadmissible based on his fraudulent entry into the U.S. in 1992. Moreover, regardless of whether the applicant is inadmissible pursuant to only section 212(a)(6)(C), or pursuant to both section 212(a)(6)(C) and section 212(a)(2)(A) of the Act, the applicant's U.S. citizen father is his only qualifying relative for waiver purposes in both cases and the hardship analysis would be the same.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Although counsel asserts on appeal that the applicant and his U.S. citizen and legal permanent resident brothers and sisters will also suffer hardship if a waiver of inadmissibility is not granted, section 212(i) of the Act clearly provides that extreme hardship relates only to the applicant's U.S. citizen or legal permanent resident spouse or parents. In the present case, the record indicates that the applicant's only qualifying relative is his U.S. citizen father. Hardship to the applicant himself or to his siblings will thus not be taken into account.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provided a list of factors the Board of Immigration Appeals (BIA) deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that due to health concerns, it is dangerous for Mr. [REDACTED] to travel and visit his son in Peru. The record contains a September 12, 2002, letter indicating that Mr. [REDACTED] suffers from arthritis. The record also contains a letter, dated October 1, 2001, indicating that Mr. [REDACTED] suffers from heart problems.

The medical letters submitted are not probative as to Mr. [REDACTED] health related hardship. Neither letter contains information about the health consequences of traveling to Peru. Moreover, the letters contain no information on how medical conclusions are reached, and they contain no information regarding the authors' medical credentials, backgrounds, or qualifications to assess Mr. [REDACTED] physical condition. It is further noted that, despite the claim that Mr. [REDACTED] faces health risks if he travels to Peru, the record reflects that Mr. [REDACTED] does travel to Peru and there is no evidence that he has suffered any medical hardship as a result of his travel or visits.

Counsel also asserts that although it is expensive for Mr. [REDACTED] to travel to Peru, he does so because he suffers emotional hardship when he is separated from the applicant.

Matter of Pilch, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family ties is a common result of deportation and does not constitute extreme hardship. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), additionally held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. Moreover, the U.S. Supreme Court held in *INS v.*

Jong Ha Wang, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen father would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.